IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/09/2003

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THE HONOURABLE MR.JUSTICE P.K.MISRA

Writ Petition No.7509 of 2002

A.Gopi @ Kandasamy ..... Petitioner

-Vs-

1. The Chief Engineer (Personnel)
Tamilnadu Electricity Board
No.800, Anna Salai
Chennai 2

2. The Chief Engineer
North Chennai Thermal Power Station
Chennai 120

3. The Superintending Engineer (P&A)
North Chennai Thermal Power Station
Chennai 120

4. The Executive Engineer
Electrical Coal Mechanical Division II
North Chennai Thermal Power Station
Chennai 120 ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of Certiorarified Mandamus, as stated therein.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.G.Anandakumar
for V.Radhakrishnan
for TNEB

:ORDER
Heard the learned counsel appearing for the parties.

2. In the present writ petition, the petitioner has prayed for
issuing a writ of certiorarified mandamus for quashing the order dated
27.02.2001 and to direct the respondents 2 and 3 to absorb the petitioner as
helper with effect from 27.10.1999 with all monetary and consequential
benefits.

3. About four centuries ago, Shakesphere had written,
"What is there in a name? A Rose by any other name would smell as sweet." In the present case, the dispute revolves round the name.

4. The petitioner claims that he was a contract labourer working for the benefit of the Electricity Board. Subsequently, the Board took a policy decision that the contract labourers who had completed 480 days would be entitled for regularisation and shall be absorbed as Helpers. Accordingly, the process of identification was started. In the list in Serial No.319 relates to one Gopi.A, son of Appavoo with educational qualification of 10th standard and the date of initial engagement being shown as 01.04.1993 in Coal Monitoring Division in North Chennai Thermal Power Station, in short, referred to as NCTPS. The petitioner claims to be the said person.

5. It is the case of the petitioner that the petitioner was also known as A.Kandasamy. In the Community Certificate issued in favour of the petitioner, the name has been given as A.Gopi (alias) Kandasamy, but in the service record his name was indicated as A.Gopi. The petitioner has also produced an advertisement in the Government Gazette dated 26.02.1997 to the effect that A.Kandasamy, son of G.Appavoo shall be known as A.Gopi. It is to be noticed that in the said Gazette, the date of birth shown to be 7th June,1970 and in the list maintained by the Board, the date of birth is also indicated as 07.06.1970. It is the case of the petitioner that even though in the educational record his name was mentioned as Kandasamy, he had also the alias name as A.Gopi, that is why, while being employed as contract labourer his name had been given as A.Gopi and both the persons are one and the same.

6. The petitioner has relied upon several correspondence made by the officials of the Board to other officials wherein it has been indicated that A.Gopi Contract Labourer is the very same person as A. Kandasamy. The nativity certificate and the community certificate are also to the similar effect and armed with all such undisputed documents, the petitioner states that the refusal of the Board to appoint the petitioner as a Helper as per their scheme on the ground that there is dispute relating to the name of the person is arbitrary and should be quashed.

7. The respondents have filed counter wherein it is indicated that the identity of the person who were working as contract labourers had been verified through a committee and since the name of the person who was given as A.Kandasamy in the Transfer Certificate of the School whereas in the service certificate it has been given as A.Gopi, such person was not appointed. It has also been stated that the petitioner subsequently changing the name of A.Gopi would not bind the Board. In course of hearing, the learned counsel for the respondents also took a plea that since the question of identity is a disputed question of fact, this is not a fit case where the writ jurisdiction by the High Court should be entertained.

8. Coming to the latter question first, there is no dispute that ordinarily in a writ jurisdiction, disputed questions of fact are not meant to

be decided. But where dispute is raised for the sake of " dispute" only and all the relevant materials and record point only to one conclusion, the High Court may not shirk its responsibility of doing justice merely because a "dispute" which is not a genuine dispute is raised by the respondent. Apart from other documents which have already been noticed, the petitioner had produced the identity card showing the photograph wherein the name has been described as A.Gopi and the photograph has been affixed. It is not disputed that at the time of finding out the names of persons who are working as contract labourers, the persons had to appear before the concerned authority. No dispute had ever been raised that the present petitioner was not the person who was holding the identity card of the contract labour entry pass. It is also not disputed that the petitioner who had appeared before the selection committee and at no point of time, the dispute had raised that the petitioner had appeared personally who was different from the photograph which had been affixed in the entry pass. Merely because the name given in the transfer certificate was different from the name indicated at the time of employment, the same would not take away the identity of a person. All the documents already referred to by me clearly indicate that A.Gopi was the very same person as A.Kandasamy and various certificates issued by different authorities clearly prove the aforesaid aspect. As a matter of fact, even several or recommendations issued by the officers of the Board also clearly indicate that A.Gopi whose name was in the register was the very same person as A.Kandasamy who is the petitioner herein. The dispute raised by the respondent is a mere pretext and not a genuine dispute relating to identity of person. If there would have been any dispute about the identity, the respondent could have established the same by producing relevant documents wherein the petitioner must have signed to show the difference in signature. In the absence of any genuine material on record, doubting the unimpeachable documents mere raising of the dispute is not sufficient to throw away the writ application filed by the petitioner.

9. For the aforesaid reasons, I allow the writ petition and direct that the petitioner shall be deemed to have been appointed as Helper under the Board with effect from 27.10.1999. However, it is made clear that the petitioner shall be entitled to get his salary only from the date he joins. The respondents are directed to permit the petitioner to join the duty within eight weeks from the date of receipt of a copy of this order.

10. The writ petition is allowed accordingly. No costs.

Index:yes
Internet:yes
ksr
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